IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 766 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ANANDBHAI @ ANU NARANBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 766 of 2001

MS SUBHADRA G PATEL for Petitioner No. 1

Mr. H.L. Jani, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 25/07/2001

ORAL JUDGEMENT

Heard learned advocate Ms. Patel for the petitioner and the learned AGP Mr. Jani for the respondents. In this petition under Article 226 of the the Constitution of India, the petitioner has challenged

the impugned order of detention dated 30.12.2000 actually executed on 6th January, 2001 passed by the detaining authority whereunder the petitioner has initially been ordered to be detained at the Porbandar Jail as Class II detenu. According to the grounds of detention communicated to the petitioner, in all, three offences have been registered against the petitioner under the provisions of the Bombay Prohibition Act wherein last offence registered is dated 28.11.2000. The petitioner has been considered to be the bootlegger as defined under section 2(b) of the PASA Act. The statements of the secret witnesses were recorded on 30.11.2000 and were verified by the Dy. S.P. on 5.12.2000 and the same has again been verified by the detaining authority on 29th December, 2000. The respondents have filed reply to the present petition. Vide representation dated 19.1.2001 made to the detaining authority which was received by the detaining authority on 20th January, 2001 and the same was rejected by the State Government on 1.2.2001. The submission of the learned advocate for the petitioner is that by the said representation, the petitioner has made a request for supply of certain documents but no documents have so far been supplied by the respondents and, therefore, it is denial of the right of the petitioner to make effective representation under Article 22 (5) of the Constitution of India. Specific contention to that effect has been raised in para 12 of the petition. She has also submitted that no clarification has been made by the respondents as to why the documents demanded under the said representation have not been supplied to the petitioner. Therefore, according to her, it has also deprived the petitioner from making an effective representation against his detention and this has, therefore, infringed Article 22(5) of the Constitution of India. She has further submitted that the documents forming part and parcel of the grounds of detention were initially not supplied to the detenu which would amount to non communication of grounds and for which representation was made and the same was rejected by the respondents on 20.2.2001 and no documents were supplied to the detenu as demanded under the said representation. She has further submitted that in para 12 of the petition, specific contention has been raised that the copy of the documents as per her representation as aforesaid has not been supplied to the petitioner alongwith the grounds of detention and when copies thereof were demanded vide representation dated 19.1.2001, same was rejected after the period of about one month without assigning any reason for non supply thereof though the same were forming part and parcel of the grounds of detention. According to her, it amounts

to non communication of grounds and on that ground alone, the impugned order of detention is required to be quashed and set aside. In support of these contentions, she has placed the reliance on the decision in case of M. AHmedkutty v. Union of India, reported in 1990(2) SCC 1. She has also relied upon the decision reported in 2000(2) GLR 1767.

Learned AGP Mr. Jani has submitted that looking to the facts and circumstances of the facts and circumstances of the case and material on record, the detaining authority has rightly passed the impugned order of detention. According to him, there were compelling circumstances for booking the petitioner under the provisions of the PASA Act as the activities of the petitioner were adversely affecting the maintenance of public order. He has submitted that in view of these facts, this Court should not interfere with the impugned order of detention.

I have considered the submissions of the learned advocates for the parties. I have also considered the contentions raised by the petitioner in para 12 of the petition. By representation dated 19.1.2001, specific demand was made by the petitioner for supply of the FSL Report relating to the registered offences as well as the statements recorded u/s. 161 of the Code of Criminal Procedure, 1973 which were forming part and parcel of the grounds of detention. The documents demanded under the said representation were not supplied to the petitioner but the said representation dated 19.1.2001 was rejected by the State Government on 20.2.2001. Specific contentions to that effect have been raised in the memo of petition but no explanation to that contention has been given by the respondents. It should be noted that the copies of the FSL Report in respect of the registered cases as well as the statements recorded u/s. 161 of the Code of Criminal Procedure which were forming part and parcel of the grounds of detention were not supplied to the detenu inspite of the detenu's representation as aforesaid. As per my view, this has deprived the petitioner from making an effective representation and delay in supply of such document has vitiated the continued detention of the detenu. It is also required to be noted that though the copies of the said documents were demanded by the petitioner vide his representation dated 19.1.2001 but same have not been supplied to the petitioner and no explanation in that regard has been made in the affidavit in reply filed by the respondents. The view of the apex court in this regard in the decision reported in 1990(2) SCC page 1 is material. Para 19 and

20 of the said decision read as under:

"19. The next submission is that of non-supply of the bail application and the bail The next submission is that of non-supply of the bail application and the bail order. This Court, as was observed in Mangalbhai Motiram Patel v. State of Maharashtra, [1981] 1 SCR 852, has 'forged' certain procedural safeguards for citizens under preventive detention. The Constitutional imperatives in Article 22(5) are two-fold: (a) The detaining authority must, as soon as may be i.e. as soon as practicable, after the detention communicate to the detenu the grounds on which the order of detention has been made, and (2) the detaining authority must afford the detenu the earliest opportunity of making the representation against the order of detention. The right is to make an effective representation and when some documents are referred to or relied on in the grounds of detention, without copies of such documents, the grounds of detention would not be complete. The detenu has, therefore, the right to be furnished with the grounds of detention along with the documents so referred to or relied on. If there is failure or even delay in furnishing those documents it would amount to denial of the right to make an effective representation. This has been settled by a long line of decisions: Ramachandra A. Kamat v. Union of India, [1980] (2) SCR 1072; Frances Coralie Mullin v. W.C. Kharnbra & Ors., [1980] 2 SCR 1095; Smt. Ichhu Devi Chararia v. Union of India, [1981] SCR 640; Pritam Nath Hoon v. Union of India, [1981] 1 SCR 682; Shri Tushar Thakkar v. Union of India, [1980] 4 SCC 499; Lallubhai Jogibhai Patel v. Union of India, [1981] 2 SCC 427; Kirit Kumar Chaman Lal Kundaliya v. Union of India, [1981] 2 SCC 436 and Smt. Ana Carelina D'Souza v. Union of India, [1981] Suppl. SCC 53.

20. It is immaterial whether the detenu already knew about their contents or not. In Mehrunissa v. State of Maharashtra, [1981] 2 SCC 709, it was held that the fact that the detenu was aware of the contents of the documents not furnished was immaterial and non-furnishing of the copy of the seizure list was held to be fatal. To appreciate this point one has to bear

in mind that the detenu is in jail and has no access to his own documents. In Mohd. Zakir v. Delhi Administration, [1982] 3 SCC 2 16 it was reiterated that it being a Constitutional imperative for the detaining authority to give the documents relied on and referred to in the order of detention pari passue the grounds of detention, those should be furnished at the earliest so that the detenu could make an effective representation immediately instead of waiting for the documents to be supplied with. The question of demanding the documents was wholly irrelevant and the infirmity in that regard was violative of Constitutional safeguards enshrined in Article 22(5)."

Para 12 of the decision reported in 2000(2) GLR 1767 reads as under:

"12. Thus, the correct legal position, which emerges from the aforesaid decisions is as under:

(i) Failure to furnish the copies of the documents to which only a reference or a casual or passing reference was made in the grounds of detention is not an infringement of Art. 22(5), fatal to the order of detention.

(ii) While a distinction has to be maintained between a document which has been relied upon by the detaining authority in the grounds of detention and a document which finds a mere reference in the grounds of detention, non supply of the copy of the documents relied upon in the grounds of detention is fatal to continue the detention and in such cases the detenu need not to show that any prejudice is caused to him. Non supply of such a document would amount to denial of right of being communicated the grounds and of making an effective representation against the order.

(iii) When the detenu was already on bail at the time when the detention order was passed, the detaining authority has to necessarily rely upon the bail application and the order granting bail as that would be a vital ground for ordering the detention and in such cases, the copies should also be supplied to the detenu.

(iv) What applies to a document would equally apply to furnishing translated copy of the document in the language known to and understood by the detenu, should be the document in a

different language."

Therefore, in view of the non supply of the copies of the aforesaid statements which were forming part and parcel of the ground of detention, right of the detenu to make an effective representation under Art. 22 (5) of the Constitution of India has been adversely affected and, therefore, in view of the aforesaid two decisions, the impugned order of detention is required to be quashed and set aside.

In the result, this petition is allowed. Impugned order of detention dated 30.12.2000 passed by the detaining authority is quashed and set aside. The detenu Anandbhai alias Anu Naranbhai who has been detained in Special Jail, Porbandar is ordered to be released forthwith if he is not required in any other case. Rule is made absolute accordingly with no order as to costs. DSP.

25.7.2001. (H.K.Rathod,J.)
Vyas